

Before the
FEDERAL COMMUNICATIONS Commission
Washington, D.C. 20554

RECEIVED

DEC 12 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98/

To: The Commission

SUPPLEMENTAL COMMENTS OF
BEEHIVE TELEPHONE COMPANY, INC.

Beehive Telephone Company, Inc. ("Beehive"), by its attorney, hereby notifies the Commission that it did not seek reconsideration of the First Report and Order in the above-captioned proceeding as indicated at Appendix B to the Common Carrier Bureau's *Public Notice*, DA 01-2636 (Nov. 11, 2001), and that its petition for reconsideration of the Second Report and Order was denied by the Commission. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 14 FCC Rcd 16559 (1999), *aff'd*, *Beehive Tel. Co., Inc. v. FCC*, 221 F.3d 195, 2000 WL 816013 (D.C. Cir. 2000).

Of the issues Beehive raised in its petition for reconsideration, two have been decided. The D.C. Circuit Court of Appeals held that the Commission was not required to implement § 251(e) of the Telecommunications Act of 1996 ("1996 Act") by August 8, 1996, and that it was not required, as a matter of law, to invalidate the 800 Service Management Service Functions Tariff ("SMS Tariff"). *See Beehive*, 2000 WL 816013, at *1. Unresolved are Beehive's claims that the Commission: (1) did not implement the impartial numbering

No. of Copies rec'd 043
List A B C D E

administration provisions of § 251(e)(1) of the 1996 Act with respect to toll-free numbers; and (2) violated §251(e)(2) of the 1996 Act by allowing the costs to administer toll free numbers to be recovered under the SMS Tariff. *See* Petition for Reconsideration, at 6-11 (Sept. 30, 1996).

Nearly six years have passed since the 1996 Act was enacted and toll free numbers are still administered as they were in 1993. The Commission has not amended Subpart D of Part 51 to include any rule implementing § 251(e) of the 1996 Act. As a result, toll free numbers are administered under the provisions of the SMS Tariff filed by the Bell Operating Companies (“BOCs”), which are not “impartial entities.” 47 U.S.C. § 251(e)(1). Moreover, costs of toll free number administration are being recovered under the SMS Tariff, and are not being “borne by all telecommunications carriers.” *Id.* § 251(e)(2).

In May 2000, the Commission advised the D.C. Circuit that the issues Beehive raised were pending in the “toll free rulemaking” in CC Docket No. 95-155, and that an order disposing of them would be issued in that docket during the spring of 2000.^{1/} While it denied Beehive’s petition for review, the court clearly expressed its agreement with Beehive’s argument that the Commission had not adopted rules to implement § 251(e) with respect to toll free numbers:

We sympathize with Beehive’s frustration at the FCC’s slow pace in promulgating regulations relating to toll-free numbering

^{1/} *See* Brief for Respondents at 21, 23, *Beehive* (D.C. Cir. No. 99-1328).

administration. * * * Although we have agreed with the FCC that the 1996 Act did not require the agency to implement regulations by August 8, 1996, that deadline and others in the 1996 Act reflected Congress's sense of urgency when it ordered the implementation of neutral and competitive numbering administration of all types. The FCC has assured the court that it will issue an order disposing of the matters raised by Beehive during the spring of 2000. We trust it will "adhere substantially to the schedule it set for itself"^{2/}

The court shared Beehive's expectation that the Commission would adopt implementing rules in Docket No. 95-155. However, no rules were promulgated by the Commission's Fifth Report and Order in the toll free proceeding. *See Toll Free Service Access Codes*, 15 FCC Rcd 11939, 11945-51 (2000). Rather, the only action the Commission took was to "look" to the North American Numbering Council ("NANC") "for a recommendation on how best to administer toll free numbers." *Toll Free Service Access Codes*, 15 FCC Rcd at 11950. Unfortunately, the NANC subsequently declined to make a recommendation, having been unable to reach a consensus regarding the manner of toll free number administration. *See* Letter from John C. Hoffman to Dorothy T. Atwood (Mar. 21, 2001). Thus, after nearly six years, the Commission is still unable to adopt a single rule to implement § 251(e) with respect to the administration of toll free numbers.


While it denied Beehive's petition for reconsideration, the Commission has not finally resolved all the issues Beehive raised. And the Commission has not met its statutory

^{2/} *Beehive*, 2000 WL 816013, at *1.

obligation to “complete all actions necessary to establish regulations to implement the requirements” of § 251(e). 47 U.S.C. § 251(d)(1). If it truly believes that allowing numbers to be administered by the BOCs as a monopoly, tariffed telecommunications service complies with the impartial administration requirements of § 251(e), as well as the pro-competitive, de-regulatory goals of the 1996 Act, the Commission should explicitly and finally decide that it will adopt no new rules to implement § 251(e) with respect to toll free numbers. However, if it recognizes that current toll free number administration is wholly inconsistent with the 1996 Act, as we believe, the Commission should adopt implementing regulations posthaste.

Respectfully submitted,

BEEHIVE TELEPHONE COMPANY, INC.

By: 

Russell D. Lukas
Its Attorney

LUKAS, NACE, GUTIERREZ & SACHS, Chartered
1111 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 828-9467

December 12, 2001

CERTIFICATE OF SERVICE

I, Catherine M. Seymour, a secretary in the law firm of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 12th day of December, 2001, sent by first class U.S. mail copies of the foregoing "SUPPLEMENTAL COMMENTS OF BEEHIVE TELEPHONE COMPANY, INC." to the following:

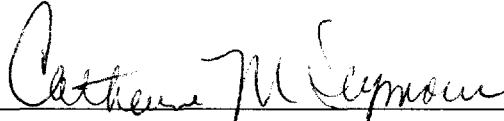
John M. Goodman, Esquire
Verizon
1300 Eye Street, N.W., Suite 400 West
Washington, D.C. 20005-3314

Leon M. Kestenbaum, Esquire
Sprint Communications
401 9th Street, N.W., 4th Floor
Washington, D.C. 20004

Henry G. Hultquist, Esquire
WorldCom, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Louise L. M. Tucker, Esquire
Telcordia Technologies, Inc.
2020 K Street, N.W., Suite 400
Washington, D.C. 20006

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-C327
Washington, D.C. 20554



Catherine M. Seymour